
(2020) 01 JH CK 0082

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 329 Of 2013

Sahdeo Mahto @ Subhash Mahto

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Citation : (2020) 01 JH CK 0082

Hon'ble Judges : Shree Chandrashekhar, J;Ratnaker Bhengra, J

Bench : Division Bench

Advocate : H.P. Singh

Final Decision : Dismissed

Judgement

Shree Chandrashekhar,J

1. The appellant, namely, Sahdeo Mahto @ Subhash Mahto has challenged the judgment in Special Case no. 04 of 2004 (P). Along with him, the

accused William Marandi was also convicted by the Special Court vide judgment dated 12.3.2013.

2. Proceedings in this criminal appeal would disclose that on the 1st date of hearing itself, that is , on 13.6.2013, when this criminal appeal was placed

on board for hearing, no one appeared for the appellant.

3. Thereafter, whenever the matter was listed no one has appeared for the appellant. This matter was listed on 25.7.2019. On that day, the following

order was passed by this court:

â??Records of Special Case No. 04 of 2004 (P) has not been received in the Registry of this Court.

The learned Judicial Commissioner, Ranchi shall comply with the order dated

02.07.2019.

Today no one appears on behalf of Sahdeo Mahto @ Subhash Mahto who is appellant in Cr. Appeal (D.B.) No. 329 of 2013.

Sri Jitendra S. Singh, the learned counsel appearing for the appellant, namely, William Marandi @ William Maradi in Cr. Appeal (D.B.) No.

327 of 2013 states that this appellant is in judicial custody for more than 14 years.

The learned APP shall obtain a report on total period of custody of the appellants in both the criminal appeals.

Let notice on administrative side be issued to the learned counsel who have filed vakalatnama on behalf of the appellant- Sahdeo Mahto @

Subhash Mahto in Cr. Appeal (D.B.) No. 329 of 2013 so that they have personal notice on hearing of this criminal appeal.

Post these matters on 27.08.2019 under the heading 'Final Disposal'.

The Senior Superintendent of Police, Ranchi shall file an affidavit on the steps taken by the police for apprehending the convict- Sahdeo Mahto @

Subhash Mahto.

4. Today also no one appears for the appellant.

5. It has been brought on record that while in police custody the appellant, namely, Sahdeo Mahto @ Subhash Mahto has fled away and, thereafter, he has not been apprehended.

6. An affidavit dated 23.7.2019 sworn by Sub-Divisional Police Officer, Kiruburu has been filed. The learned APP states that in spite of efforts, the

appellant, namely, Sahdeo Mahto @ Subhash Mahto could not be traced out. 7. The appellant is a convict and he has fled away from custody of the

police. Evidently, he is a violator of law. In 'Mahendra Bhogilal Tadvī Vs. State of Gujarat' reported in (2009) 1 GLR 91, a Division Bench of the

Hon'ble Gujarat High Court has dismissed the criminal appeal preferred by an absconder without hearing him on merits.

8. In 'Surya Baksh Singh V. State of U.P.' reported in (2014) 14 SCC 222, the Hon'ble Supreme Court has observed as under:

'16. We cannot close our eyes to the reality that less than twenty per cent of prosecutions are successful; the rest are futile largely

because of inept, shoddy or substandard investigation and prosecution. Even in cases where the prosecution succeeds in proving the guilt

of the accused, punishment is emasculated by convicts not because of their succeeding in having their conviction overturned and reversed

by the appellate court, but by going underground and disappearing from society after receiving reprieve from incarceration from the

appellate court. We are convinced that the interests of society at large are being repeatedly sacrificed for the exaggerated, if not misplaced

concern for what is fashionably termed as "human rights" of convicts. Recent judgments of the Court contain a perceptible dilution of

legal principles such as the right of silence of the accused. The Supreme Court has, in several cases, departed from this rule in enunciating,

inter alia, that the accused are duty-bound to give a valid explanation of facts within their specific and personal knowledge in order to

dispel doubts on their complicity. Even half a century ago this would have been a jural anathema. Given the woeful success rate of the

prosecution, if even the relatively niggard number of convicts are permitted to circumvent their sentences, crime is certain to envelop

society. Law is dynamic and not immutable or static. It constantly adapts itself to critically changing compulsions of society. (See State of

Punjab v. Devans Modern Breweries Ltd.)

17. The criminal justice delivery system is being held to ransom by convicts who have developed the devious and dishonest practice of

escaping punishment or sentence by filing appeals, obtaining bail or suspension of sentence and thereafter disappearing beyond the reach

of the arms of the law. The inherent powers under Section 482 CrPC, which the Supreme Court has on several occasions expounded to have

existed from time immemorial, predating the present as well as the previous CrPC, must be pressed into action lest the already fragile

policing and prosecuting branches of governance are rendered redundant. Since Section 482 CrPC was not considered by either of the

three-Judge Benches of this Court, we have not found it necessary to resort to recommending the matter for being laid before a larger

Bench. The facts and pronouncement in Bani Singh cannot be extrapolated to the factual matrix before us. On the contrary the opinion in

Ram Naresh Yadav as well as in Kishan Singh are available to us to ensure that preventive action is devised to combat the abuse of court

process so that facilitative steps are taken to secure the ends of justice.

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25. The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on

several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances

where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The

routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable

or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to

become a mute spectator to the spectacle of the convict circumventing his conviction. (See *Stirland v. Director of Public Prosecutions*,

quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh*.) If the court is derelict in doing its duty, the social fabric will

be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of

appeals. The inherent powers of the High Court, poignantly preserved in Section 482 CrPC, can also be pressed into service but with care,

caution and circumspection.â??

9. Normally, when an appellant who has been convicted if is not represented by his counsel when the criminal appeal is listed for hearing, the Court

should appoint an Amicus and grant him sufficient time to argue the criminal appeal on behalf of the appellant. However, the fact-situation, which has

been brought on record in the present case is entirely different.

10. Keeping in mind the judgment in â??Surya Baksh Singh V. State of U.P.â?? (supra), Criminal Appeal (DB) no. 329 of 2013 is dismissed in default.

However, if the appellant surrenders before the court below or is apprehended, he may move an application for restoration of this criminal appeal,

which application of course shall be decided on its own merits.